DOCKET NUMBER: 94-12571
ADV. NUMBER: None
JUDGE: M. A. Mahoney
PARTIES: Kenneth E. Rhea, Kathleen Rhea
CHAPTER:
ATTORNEYS: C. K. Ide, I. Grodsky
DATE: 2/19/97
KEY WORDS:
PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

KENNETH E. RHEA
KATHLEEN RHEA

Case No. 94-12571

Debtors.

ORDER DENYING DEBTORS' BUSINESS BAD DEBT DEDUCTIONS AND DETERMINING RESPONSIBLE PARTY

Carol Koehler Ide, U.S. Attorney, Tax Division, U.S. Department of Justice
Irvin Grodsky, Mobile, AL, Attorney for the Debtors

This matter is before the Court on the Debtors' request to determine the amount of tax liabilities owed to the United States pursuant to 11 U.S.C. § 505 and the Debtors' objection to the claim of the United States of America (Internal Revenue Service or IRS). This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court finds that Dr. Kenneth E. Rhea and Mrs. Kathleen Rhea are not entitled to a business bad debt deduction pursuant to 26 U.S.C. § 166 and Dr. Rhea is liable for trust fund taxes of $340,519.98.

FACTS

Houston Bay Area Eye Center, P.A. (HBAEC) was a multi-specialty medical clinic employing approximately one hundred medical and non-medical personnel. It operated in Houston, Texas, from the late 1970s until 1994 (except for a short period of dormancy). Dr. Kenneth E. Rhea, an ophthalmologist, was the sole shareholder, chief physician, and president of HBAEC. Dr. Rhea's wife, Kathleen Rhea, assisted at the clinic, on a gradually escalating basis, commencing in 1992. Mrs. Rhea was also a 50% shareholder in an interior

design business, Interior Design Source (IDS). In late 1992 or early 1993, HBAEC began to experience severe cash flow problems. HBAEC filed Chapter 11 on March 8, 1994, and ceased operations upon conversion to Chapter 7 on May 9, 1994. *In re Houston Bay Area Eye Center, P.A.*, Case No. 94-41713 (Bankr. S.D. Tex.).

On December 7, 1994, the Debtors, Dr. Rhea and Mrs. Rhea, filed Chapter 11. The Internal Revenue Service (IRS) filed a proof of claim for unpaid federal taxes on behalf of the United States on April 7, 1995. The proof of claim sets forth the taxes, interest, and penalties that the IRS alleges are due. The proof of claim lists (1) a secured claim for the Debtors' 1990 income tax liabilities; (2) a secured claim for a civil penalty for the period ending March 31, 1994, assessed against Dr. Rhea; (3) an unsecured priority claim for interest on the Debtors' 1991 income tax liabilities; (4) an unsecured priority claim for a civil penalty for the period ending June 30, 1992; (5) an unsecured priority claim for a civil penalty for the period ending March 31, 1994, assessed against Mrs. Rhea; and (6) an unsecured priority claim for the Debtors' estimated 1994 income tax liabilities. On September 13, 1995, the Debtors filed an objection to the proof of claim, and, additionally, requested that the bankruptcy court exercise its authority to determine the tax liabilities pursuant to 11 U.S.C. § 505.

The proof of claim and the objection to it initiated the resolution of the disputed tax liabilities by means of the claims objection process. Trial of the matter began on August 23, 1996. By oral order entered September 19, 1996, the Court found (1) Dr. Rhea liable under 26 U.S.C. § 6672 for the trust fund recovery penalty relating to HBAEC for the period ending March 31, 1994, in the amount of $339,882.34; and (2) Mrs. Rhea not liable for the same trust fund recovery penalty. In addition, the parties agreed to the following stipulations: (1) the secured claim for the Debtors' 1990 income tax liabilities is secured only to the extent of the

Debtors' assets, and the remainder is an unsecured claim; (2) Dr. Rhea's liability for the trust fund recovery penalty was $340,519.98, rather than $339,882.34; (3) the IRS would withdraw its claim for a civil penalty for the period ending June 30, 1992; and (4) the IRS would withdraw its estimated claim for the Debtors' 1994 income tax liabilities.

The Debtors filed their 1994 income tax return, and amended their 1991 and 1992 income tax returns on or about April 1, 1996. See IRS Exhibits 16, 11 and 12. The Debtors' 1994 income tax return shows a business bad debt deduction in the amount of $757,248.00. The business bad debt deduction request results from funds the Debtors allege Dr. Rhea and Mrs. Rhea loaned to HBAEC in 1990, 1991, and 1992. The business bad debt deduction generates a net operating loss. The loss, carried back from the year 1994 to the years 1991 and 1992, entitles the Debtors to a sizeable refund. The Debtors' 1994 tax return listed seven notes executed by HBAEC as evidence of the deductions. At trial, the Rheas introduced four additional notes into evidence that were not included in the amended return filed April 1, 1996. Debtors' Exhibit No. 102, a note for $154,415 replaced another note of $253,687.97. The Rheas withdrew their claim that the $253,687.97 note was a bad debt of the Rheas. Debtors' Exhibit Nos. 108-110, are notes in the amount of $8,000, $12,995.76, and $4,000 respectively. Finally, Debtors' Exhibit No. 105 is not a shareholder loan, but is deferred compensation, and the Debtors withdrew their request for it to be treated as a business bad debt. The IRS disputes that any refund is owed. A trial to determine the right of the estate to a tax refund pursuant to § 505 was conducted on November 12, 1996.

The notes and related evidence are as follows:

1. A demand note dated July 21, 1990, in the amount of $105,507.22, bearing 10% interest. Debtors' Exhibit No.101. Bank deposit tickets and/or checks were

offered as supporting documentation for the note. (1) A deposit ticket dated March 30 in the amount of $28,000. Mrs. Rhea testified on cross-examination that the $28,000 came from IDS. (2) A deposit ticket dated April 18 in the amount of $12,058.40. It is written on the ticket that the funds are from IDS. (3) A cashier's check dated April 26, 1990, in the amount of $25,415.05. (4) A deposit ticket dated March 12 in the amount of $6,149.52. The notation on the ticket is "✓612." Dr. Rhea testified that the $6,149.52 came from him and his wife. (5) A deposit ticket dated June 7 in the amount of $16,000. The notation on the ticket is "HBA Op Acct, Cashiers ✓." (6) A deposit ticket dated June 20 in the amount of $11,650. The notation on the ticket is "TCB Cashiers ✓." (7) Five checks from Mrs. Rhea to CompuAdd, Kmart, Computer Craft and Home Depot. The five checks total $383.55. Mrs. Rhea wrote on the memo line of each check either "HB" or "office."

2. A demand note dated April 8, 1992, in the amount of $138,123.90, bearing 0% interest. Debtors' Exhibit No. 103. Debtors submitted an accounting of the use of the $138,123.90. The accounting included expenditures such as $63,233 for interior reconstruction, $14,280 for office furniture, $1,800 for employee Christmas presents, and $4,280 for entertainment. Receipts, invoices, and credit card slips totaling approximately $2,025 were offered as supporting documentation for the note. The invoices show Texas Medical Center (the operating name of HBAEC) as the customer, and the gasoline credit card slips reference a corporate account.

3. A demand note dated May 29, 1992, in the amount of $45,800, bearing 10% interest. Debtors' Exhibit No.104. The Debtors offered a check from Mrs. Rhea to HBAEC for $45,800.00 dated on the same day as the note to show the source of funds.

4. A demand note dated October 19, 1992, in the amount of $108,589.07, bearing 0% interest. Debtors' Exhibit No. 106. Debtors submitted a ledger printout showing total expenditures on behalf of Texas Medical Center (TMC) in the amount of $141,896.32, and payments of $33,307.25. Additionally, the Debtors submitted a memorandum addressed to Mark Leverett, the executive director of HBAEC, concerning the ledger printout. Four checks were offered as supporting documentation for the note. (1) A March 30 check from Mrs. Rhea to G&S in the amount of $453.00. (2) An April 2 check from Mrs. Rhea to Sterling McCall Toyota in the amount of $2,000. (3) An April 29 check from Mrs. Rhea to TMC in the amount of $2,262.25. (4) An August 7 check from Mrs. Rhea to TMC in the amount of $50,680.49. Mrs. Rhea wrote on the memo line of the check "Craig Cavalier." Mrs. Rhea testified that Craig Cavalier was an attorney for HBAEC.

5. A demand note dated May 31, 1993, in the amount of $19,054.89, bearing 10% interest. Debtors' Exhibit No. 107. The Debtors offered a check from Mrs. Rhea to TMC for $19,054.89 dated on May 6 to show the source of funds.

6. A demand note dated 1993 in the amount of $8,000 bearing 5% interest. Debtors' Exhibit No. 108. The Debtors offered 5 cashiers checks from "Texas Medical Care/K.E.Rhea" totalling $8,054.79 as evidence of the basis of the loan.

Dr. Rhea did not know where the money came from that funded these checks which were written on corporate accounts.

7. A demand note dated January 22, 1993, in the amount of $12,995.76 bearing 5% interest. Debtors' Exhibit No. 109. The Debtors offered food and taxicab receipts to Texas Medical or no specified party. Office Depot receipts, grocery store and other office supply receipts, auto repair bills, a check to Southwestern Bell and telephone slips with names and amounts owed on them. No documents, except the check to Southwestern Bell, show any source of funds for the loans.

8. A demand note dated 1993 in the amount of $4,000 bearing 10% interest. Debtors' Exhibit No. 110. Three checks from the Rheas' personal accounts were given for HBAEC's benefit. One check was payable to "Cash" and one was payable to Quest Star Bank for "open account TMC." The checks were dated April 6, April 29, and October 15, 1993.

Dr. Rhea testified that all of the income he received from 1991 through 1994 came from his ophthalmology practice at HBAEC. He earned no other salary or wages. It was Dr. Rhea's testimony that he loaned money to HBAEC in order to protect his means of making a living. Dr. Rhea felt that because of his age (late fifties) he would be unable to find a job elsewhere. He is currently not practicing medicine.

The Debtors testified that they made loans either directly to HBAEC or by paying HBAEC's bills through personal funds. For many of these loans there was neither documentation to show that the Rheas loaned the sums to HBAEC nor documentation to show that HBAEC received the money. The Rheas testified that neither of them had received payment on any of the notes listed on their 1994 tax return or the four additional notes. The Debtors

never made a demand for repayment on the notes. Earlier loans had been repaid. The loans were not secured by collateral. The Debtors did not present HBAEC records to show that they did not receive payment on the notes. All books and records of HBAEC are currently located in Houston, Texas, under the custody of HBAEC's bankruptcy trustee. The Debtors did not file a claim in HBAEC's bankruptcy, nor did Mrs. Rhea's business, IDS.

Dr. Rhea testified he became aware that HBAEC was having financial problems in late 1992 and particularly in 1993. He continued to loan HBAEC money. Dr. Rhea, according to the notes offered into evidence, loaned HBAEC $380,014.43 in 1992 and $289,506.51 in 1993. Debtors' Exhibit No. 111. It was Dr. Rhea's testimony that he believed he would be repaid because the business had large accounts receivable up to the time it ceased operations. His 1993 "Collection Information Statement for Business" shows that he had $350,000 in accounts receivable pledged to a third party and shows no value to them on his asset and liability analysis. Government Exhibit No. 15. The statement shows all notes payable totalled "approximately $300,000." It is unclear if this included the $380,014.43 already loaned to HBAEC by the Rheas or not. However, the tax returns show no recognition of those loans. The $300,000 figure is consistent with the 1992 tax return of the Rheas showing $331,102 in "mortgages, notes and bonds payable." Government Exhibit No. 12. This amount does not include the Rheas loans.

Dr. Rhea submitted a note dated February 10, 1986, to show that previous loans he had made to HBAEC were repaid. Debtors' Exhibit No.12. Written on the note is, "pd in full, interest waived, HBA ck # 14180, 2-19-86."

HBAEC's corporate income tax return for the year 1991 shows no outstanding loans from Dr. Rhea. Government Exhibit No.13. HBAEC's corporate income tax for 1992 shows a loan of $10,890 from Dr. Rhea. Government Exhibit No.14. The IRS presented checks from

HBAEC which were either made out to the Debtors or endorsed by Mrs. Rhea. The checks were dated in 1993 and 1994, and totaled an amount in excess of $100,000. Government Exhibit No. 14. Mrs. Rhea testified that she had spent a lot of time reviewing records for HBAEC's bankruptcy, and HBAEC had received credit for all payments made to her, Dr. Rhea, or their creditors. The $100,000 of payments were not repayment of the loans at issue. Her testimony on this point was convincing.

Frank Morgan, an IRS agent, reviewed the documentation supporting the Debtors' bad debt deduction. It was Mr. Morgan's testimony that the Debtors did not reasonably substantiate their alleged loans to HBAEC. There were numerous tracing problems. He testified that in many instances it was not clear whether the offered payments and deposits came from the Debtors' personal funds. He was unable to determine, in some circumstances, what was paid for. Mr. Morgan also testified that he could not determine without reviewing the corporate records if the Debtors had been repaid.

LAW

Burden of Proof

The Rheas have requested that the Court allow them to claim $596,485.84 in deductions for business bad debts pursuant to 26 U.S.C. § 166. The bad debt deductions would result in a refund for the tax year 1991 of $103,834.00 and for the tax year 1992 of $72,286.00 (or an amended amount based upon the new trial evidence). If allowed, these refunds could then be set off against the $340,519.88 trust fund tax liabilities owed by Dr. Rhea.

The burden of proving the validity of the deductions is placed on the taxpayer in a tax refund suit pursuant to 11 U.S.C. § 505(a). *Internal Revenue Service v. Levy (In re Landbank Equity Corporation),* 973 F.2d 265, 271 (4th Cir. 1992) ("As a matter of legislative grace,

deductions may be claimed and are allowed to the extent the taxpayer can prove them, whether the taxpayer is a debtor in bankruptcy or not."); *King v. United States*, 641 F.2d 253, 259 (5th Cir. 1981); *In re Walters*, 176 B.R. 835, 870 (Bankr. N.D. Ind. 1994).

The Court acknowledges that some courts hold that the burden of proof is on the United States in a case such as this. *California State Bd. of Equalization v. Official Unsecured Creditors' Comm. (In re Fidelity Holding Co., Ltd.)*, 837 F.2d 696, 698 (5th Cir. 1988). However, the Court agrees with the reasoning of the *Landbank Equity* case, *supra*, and similar cases. A bankruptcy proceeding should not change the burden of proof. It also would be inequitable to put the burden of proof on the Government. This case developed in two parts. Part I involved the IRS proving its claim to the trust fund taxes in the "traditional" claim objection manner. The Rheas bad debt deductions, claimed after the filing of this action, are in the nature of a defense or counterclaim to the debt the Court has ruled Dr. Rhea owes. As with any defense or counterclaim, the proponent should bear the burden of proof.

Regardless of the burden, the Rheas' deduction claim fails. The Court looked at the evidence twice, as if each side bore the burden of proof. The decision is the same in both instances. A taxpayer must present more than uncorroborated oral testimony or self-serving statements. *Mays v. United States,* 763 F.2d 1295, 1296 (11th Cir. 1985). The major component of the Rheas' evidence was their testimony. That testimony is not enough in this case. More evidence was needed in light of the failure to list such sizeable loans at the time of the initial returns and the impact of the loans on HBAEC's balance sheet.

The IRS also claims that part of the deduction should fail simply due to timing. The notes offered at trial were untimely once the refund claim had been made on April 1, 1996. To be included in the request, the notes needed to have been part of the amended return. "Federal

Courts have no jurisdiction to entertain taxpayer allegations that impermissibly vary or augment the grounds originally specified by the taxpayer in the administrative refund claim." *Charter Co. v. United States,* 971 F.2d 1576, 1578 (11th Cir. 1992). The IRS contends that this case law precludes the Debtors from arguing that the four notes not included in their filed amended 1994 return should be considered at all. Debtors' Exhibit Nos. 102, 108, 109, and 110. The Court will consider the four notes in its decision although there may well be grounds to disallow the deduction on the *Charter Co.* case grounds. Even if they had been included with the amended 1994 return, the Court's decision would be the same.

Substantive Law

The conflict between the IRS and the Rheas over the Rheas' bad debt deductions is not a new one. The case law is replete with the stories of taxpayers claiming "loan" and the IRS claiming "equity."

> Congress has seen fit to impose a tax on dividend income received by a stockholder allowing a corresponding deduction to the payor corporation. On the other hand, the repayment of a loan or advance by a corporation results in no tax liability to the contributor. As a result of the advantageous treatment accorded loans, stockholders of closely held corporations have preferred to begin operations with a small initial stock investment accompanied by a substantial "loan" of additional funds . . . This practice, if unrestricted would permit the investor to withdraw corporate funds at a later date without tax incidents. The Internal Revenue Service has justifiably sought to prohibit this practice by characterizing such 'loans' as an equity investment in the corporation where appropriate. It is within the context of this understandable conflict between those who seek to minimize their tax liability and the government which would maximize the same that the instant case arises. (Cites omitted)

Estate of Mixon v. United States, 464 F.2d 394 (5th Cir. 1972).

There are two tests that the alleged loans must pass. One, does the evidence show that loans were made? Two, if there were loans, are they business bad debts? The *Mixon* case

considered thirteen factors important to decisions in this "debt v. equity" controversy. *Mixon* at 464 F.2d 402. The Court will consider each factor separately.

Mixon Factors

1. Name given to the certificates evidencing the debt. In this case, all of the Rheas' debt was denominated as debt by "Demand Note" or "Promissory Note" designations on the six instruments. Often the notes were given to cover an aggregate of payments made by the Rheas on HBAEC's behalf.

2. The presence or absence of a fixed maturity date. All of the notes were payable upon demand. The Rheas indicated that several past notes had been repaid.

3. The source of payments. The source of payments was unclear, but Dr. Rhea testified that he believed HBAEC always had sufficient accounts receivables to pay his loans and the factor. The documents furnished by Dr. and Mrs. Rhea to the IRS in Government Exhibit No. 15 show that this belief, at least by 1992, was without basis.

4. The right to enforce payment of interest and principal. The notes make no provision for collateral and are not secured. Two of the notes contain no interest requirement. Four earn interest at 10% per annum. Two accrue interest at 5% per annum. The notes appear to be "ordinary" notes which spell out no peculiar legal remedies. They rely generally on Texas law as to enforcement rights.

5. Participation in management flowing as a result. Since Dr. Rhea was the sole shareholder and CEO, no additional or enhanced management rights existed due to these notes.

6. The status of the contribution in relation to regular corporate creditors. The notes do not in any way address this issue. There is no subordination clause. No repayment of the

notes was shown to have been made before disinterested creditors. No claims were filed in HBAEC's bankruptcy by the Rheas.

7. The intent of the parties. The Rheas testified that they intended the funds advanced to be loans and intended to be repaid regardless of the success of the business. Dr. Rhea stated that the purpose of the loans was to keep Dr. Rhea's job and keep the business going.

The original 1991 tax return of HBAEC shows no shareholder loans to the company. The 1992 return shows $10,890 in loans at year end (12/31/92). According to the amended returns, the Rheas are actually claiming $552, 435.19[1] was loaned to HBAEC during that period. It is incredible to assume that loans of that size could be left off the corporate returns by mistake if they were truly debt.

8. "Thin" or adequate capitalization. The Rheas testified that at the time of the 1990 and most of the 1992 loans, they were not aware of the deep financial problems of the corporation. In late 1992 and in 1993, they were, although they testified that they believed the factoring and size of the accounts receivable alleviated the financial problems of HBAEC. However, if they had listed the other outstanding loans allegedly owed to them by the corporation on its balance sheets, the financial picture of the company changes drastically. An additional $250,000 owed by 1991 and an additional $350,000 by the end of 1992 makes it clear the business was more troubled than the balance sheets reflect and even with accounts receivable, the loans put the company in troubled financial condition.

---

[1] The total deduction would be $621,481.60 instead of $747,248.05 as originally claimed for the reasons stated in the Rheas' brief. The Rheas state that the amount of the deduction would be $596,485.84, but this amount fails to include Debtor's Exhibit Nos. 108, 109, and 110.

9. Identity of interest between creditor and stockholder. This factor looks at the taxpayer's ownership interest in relation to the amount and percentage advance. In other words, if a taxpayer holds a 10% interest in the business but loans 80% of the total funds loaned to the business, then the loan is more likely to be genuine. In this case, Dr. Rhea owned 100% of HBAEC.

10. The source of interest payments. The Rheas allege that no interest or principal payments were made on the loans at issue. The records of HBAEC available at trial were incomplete and cannot document this fact.

11. The ability of the corporation to obtain loans from outside lending institutions. HBAEC secured two different factoring loans in 1993 which were collateralized by its receivables. It appears from Government Exhibit No. 15 that there was limited or no equity in the receivables after the secured position of the factor.

12. The extent to which the advance was used to acquire capital assets. Other than a few instances in which it is clear the money purchased small items of office equipment, the funds were not used to buy tangible assets nor were any secured by tangible assets.

13. The failure of the Debtor to repay on the due date or to seek a postponement. Since the notes were all demand notes, this criterion is not relevant. However, the Rheas did not file a claim for the loans in HBAEC's bankruptcy.

The intent factor clearly weighs on the side of disallowance. The factors which favor the Rheas are those which mainly show that loan documents were in existence. Intent of the parties to make a loan requires that there be some reasonable certainty of repayment. *Lane v. United States (In re Lane),* 742 F2d 1311, 1314 (11th Cir. 1984). In 1991, HBAEC had $262,264.73 in funds loaned to it by the Rheas according to their evidence. By the end of 1992, the amount was

about $600,000. By 1993, the amount loaned was in excess of $600,000. No evidence showed a true ability to repay these sums. Dr. Rhea may have been less than fully knowledgeable about his finances, but this is not a legal excuse. No amounts of these loans were ever repaid. Other creditors were being paid after due dates. The loans were never listed on tax returns until 3-5 years later. The size of the loans makes oversight or carelessness as a grounds for not including them incredible.

The notes were sometimes given for aggregations of payments made by the Rheas on HBAEC's behalf. Aggregations look more like equity contributions characterized as loans. *Piggy Bank Stations, Inc. v. C.I.R.,* 755 F.2d 450, 455 (5th Cir.), *cert. denied*, 474 U.S. 843 (1985). Some of the notes were at no interest. This appears more like a capital contribution. Some of the notes funded day to day operations.

Further, Mrs. Rheas's company, IDS, made some of the loans. These loans were not made to protect Mrs. Rhea's business or profession and are not business loans when made by her.

The IRS argued that the debts are not "business" bad debts because neither Dr. Rhea nor Mrs. Rhea were in the business of financing corporations or managing them. *Whipple v. C.I.R.*, 373 U.S. 193, 202 (1963); *Kelly v. Patterson*, 331 F.2d 753, 755 (5th Cir. 1964). The Court need not address this issue since the Court is finding that the debts were capital contributions and not loans.

Other Factors

The absence of sufficient financial records of HBAEC and the Rheas makes proof by a preponderance impossible. Without the records, the majority of the evidence is the testimony of the Rheas. The Court needs more than their statements where the evidence shows that their

original returns never listed the debts. It is simply incredible without more documentation that the Rheas forgot to list over $600,000 in loans.

The Rheas contend that they are unable to produce many of their corporate records because of HBAEC's bankruptcy and their subsequent move to Mobile. The records are voluminous and they do not have the ability to go to Houston and get them. The cost and time involved in a search of the trustee of HBAEC's stored records would be prohibitive. The Rheas contend the records they have produced are enough, together with their testimony. Although the burden the Court is placing on the Rheas is a difficult one in light of the circumstances, it is required.

CONCLUSION

The Court finds that the Debtors have failed to prove the loans were debts and not capital infusions by a preponderance of the evidence. The Rheas' proof is counterbalanced by the total amount of the advances and the failure to list them on tax returns for numerous years, the lack of interest on many of the notes, the lack of security, and HBAEC's difficult financial position, even in 1991 and 1992 if the loans are considered. When these facts are added to the lack of documentation, the Court cannot conclude that the debts are actual loans.

THEREFORE IT IS ORDERED:

1. The Debtors' claim for a business bad debt deduction of $621,481.60 is DENIED;
2. Kenneth E. Rhea is a responsible party as that term is used in 26 U.S.C. § 6672;
3. Kenneth E. Rhea is liable to the United States in the amount of $340,519.98 for trust fund taxes for the period ending March 31, 1994; and
4. The Debtors shall file an amended plan and disclosure statement by March 31, 1997.

Dated: February 19, 1997

_____
MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE